IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3923 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARLAL H PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MR ANAND for Petitioner(s) : 1,MR DIPAK C RAVAL for Petitioner(s) : 1,
MS HANSA PUNANI AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 22/06/2006
ORAL JUDGMENT

In this petition under Article 226 of the Constitution, the petitioner, who has by now retired from the post of Deputy Executive Engineer in the State Government in the Narmada and Water Resources Department, has challenged the order dated 19.6.1992

(Annexure-I) of the State Government holding the petitioner guilty of certain charges levelled against him in a departmental inquiry and imposing the penalty of reduction to the lower post for a period of two years with effect on seniority and pay.

2. The petitioner was appointed as a Junior Engineer in the year 1967 and was thereafter promoted as Deputy Executive Engineer in the year 1975. In November 1984, the petitioner was served with a charge-sheet dated 20.11.1984 (Annexure-A) levelling 11 charges against the petitioner in respect of sale of certain scrap materials when the petitioner was Deputy Executive Engineer in charge of the work-shop Sub-division in Baroda.

2.1 The petitioner submitted his reply dated February 1985 (Annexure-D) denying the charges and submitted in substance that the materials in question were sold with the permission of the higher authority i.e. Executive Engineer of the concerned Division and at rates approved or sanctioned by the said higher authority. It was also contended that the petitioner had not done anything so as to cause any loss to the Government. The petitioner also pointed out in his reply affidavit the ground realities on the site which required the useless or scrap material to be removed and also the instructions given by the higher officers for removing such useless or scrap material. It was also submitted that the amounts involved were very small and that it was not practicable to invite

tenders for removal of such materials when such useless/ scrap materials were required to be removed to make more room in the workshop for other incoming materials and also when certain useless/ scrap materials were required for other departmental works like filling in the pits in the workshop shed as per the requirement of the Roads & Buildings Department of the State Government. It was also contended that certain measurements in question were taken by the Junior Engineer and the petitioner cannot be held responsible for mistakes or inaccuracies in such measurements.

2.2 The Inquiry Officer submitted his report dated 15.5.1987 to the effect that, out of 11 charges, charge Nos.1, 4 and 7 were partly proved, charge Nos. 5, 6 and 11 were proved and that the other charges were not proved. A copy of the report was given to the petitioner who submitted his representation and requested for being exonerated.

2.3 The Disciplinary Authority, however, passed the impugned order dated 19.6.1992 accepting the report of the Inquiry Officer and imposing the penalty of reducing the petitioner to the lower post of Engineer for a period of two years with a further provision in the penalty order that the petitioner will not be entitled to get any seniority or pay. After receiving the above penalty order, the petitioner submitted a representation dated 5.8.1992 requesting the State Government for reconsidering the

penalty order. The State Government, however, by its communication dated 5.3.1993 rejected the representation. Hence, the present petition came to be filed in April 1993.

3. Since out of the 11 charges levelled against the petitioner 5 charges are not proved, it is not necessary to refer to those charges and only those charges which are held to have been proved against the petitioner are set out and discussed hereinafter. Since charge Nos.1, 4, 6, 7 and 11 are basically in relation to violation of certain procedures, the Court proposes to deal with those charges first and thereafter to deal with charge No.5 where allegation about tampering with the record was made against the petitioner.

4. Mr Dipak C Raval, learned counsel for the petitioner has submitted that the petitioner was Deputy Executive Engineer (Mechanical) in-charge of the Workshop Subdivision of the Narmada & Water Resources Department in Baroda and the main job of the petitioner was to run the iron foundry and to manufacture iron materials like pipes and manhole covers. While carrying on such manufacturing activity with the aid of coal as fuel, there were waste products or bi-products like coal ash, aluminium chips, slag (waste after resulting from the use of pig iron etc.). The petitioner was a Technical Officer with the qualification in Mechanical Engineering and, therefore, he had to concentrate on

the manufacturing activity as his main job. When it came to disposal of the waste products or bi-products, the petitioner used to refer the matter to the Divisional Office headed by the Executive Engineer and the disposal of the waste products or bi-products was being made as per the instructions of and with the permission of the Divisional office headed by the Executive Engineer. It is submitted that even the Inquiry Officer in his report, which came to be accepted by the State Government as the Disciplinary Authority, indicated in the course of discussion of most of the charges that the proposals or actions of the petitioner for disposal of the waste products/ bi-products were approved or ratified by the Divisional office headed by the Executive Engineer and, therefore, the petitioner cannot be said to have committed any misconduct much less any misconduct which would or could warrant the harsh penalty of reduction to the lower post and that too with disastrous future effect on the petitioner's seniority and pay which has continued to inflict further monetary loss on the petitioner even after his retirement. It is also submitted that the Executive Engineer against whom also the departmental inquiry was held has been subjected to the penalty of reduction in pension to the tune of only Rs.75/-p.m. for a period of three years and the Junior Engineer who had actually taken the measurements in relation to charge No.11 was allowed to get away with a mere warning.

5. With the aforesaid background, the learned counsel for the petitioner has assailed the findings of the Inquiry Officer as accepted by the Disciplinary Authority in respect of the six charges for which the petitioner has been held to be guilty or partly guilty. The Court proposes to deal with the said submissions ad-seriatim.

6.1. Charge No.1 was to the effect that the petitioner had deliberately shown smaller quantity of coal ash while disposing of the coal ash lying in the workshop so as to avoid the requirement of the public auction for disposing of such coal ash.

6.2 The petitioner's reply was that the workshop was basically a manufacturing foundry and coal was used as fuel and, therefore, there was continuous incoming supply of coal which also resulted into coal ash being a waste product which was required to eb removed from time to time. Looking to the nature of such waste product being in the form of powder, at no point of time any register was being maintained for recording the quantity of coal ash. The petitioner had estimated that at the relevant time in the year 1978 about 200 Metric Tonnes of coal ash was lying and the same was required to be disposed of. The Executive Engineer also granted permission for disposal of coal ash estimated to the tune of 200 MT. At the time of sale, the coal ash was found to the tune of 156.785 MT and it was sold at the rate of Rs.82/- per MT as against the rate of Rs.78 per MT at

which coal ash was sold in the previous year i.e. in the year 1977. The Inquiry Officer found that when the quantity of coal ash was 200 MT, as per the Government Resolution dated 5.11.1977, the permission of the Superintending Engineer was required and the Executive Engineer could not have granted permission for disposal of such quantity. The submission is that when the Executive Engineer had permitted the petitioner to dispose of 200 MT of coal ash, the Inquiry Officer ought not to have held that charge No.1 partly proved.

6.3 The Court finds considerable substance in the submission of Mr Raval for the petitioner that when the petitioner had sent the proposal to the Executive Engineer for disposal of coal ash estimated to be of the quantity of 200 MT and the Executive Engineer permitted the petitioner to dispose of the same, the petitioner could not be said to have committed any misconduct when ultimately the coal ash sold was 156.785 MT. According to the Inquiry Officer, tenders ought to have been invited for such sale. The defence of the petitioner was that in the previous year such coal ash was sold at the rate of Rs.78 per MT and in the year 1978 the petitioner sold the same at the rate of Rs.82 per MT after inviting quotations from local traders. It thus appears that the amount realized upon sale of 156.785 MT of coal ash at the rate of Rs.82 per MT was in the range of about Rs.13,000/- only and even if there was requirement for inviting tenders for sale of

materials exceeding Rs.5,000/-, considering the fact that coal ash, lying in the workshop, which was essentially foundry for manufacturing activity, was required to be cleared and considering the quantity of coal ash, inviting the tenders through public advertisement would have put the Government to heavy expenses of advertisement. In any view of the matter, when the Executive Engineer had permitted the petitioner to go ahead with the disposal of coal ash, which was a waste product, through invitation of quotations from local traders and looking to the higher price fetched as compared to the price fetched in the previous year, it cannot be said that the petitioner had committed any misconduct. The finding of the Inquiry Officer, as accepted by the Disciplinary Authority, on this score must, therefore, be quashed and set aside as arbitrary and perverse.

7.1. Coming to charge No.4, the same read as under:-

> “The petitioner was responsible for disposal of unserviceable materials without making any survey report and by showing them in lesser quantity so as to avoid the requirement of inviting tenders.”

7.2 The petitioner's defence was that the mild steel scrap, aluminium chips etc. were waste products or bi-products of the manufacturing activity of the

foundry and the petitioner had submitted a proposal to the Divisional office headed by the Executive Engineer for disposal of the said items and the Divisional office headed by the Executive Engineer and having a Divisional Accountant and a Storekeeper had permitted the petitioner to dispose of such waste products or bi-products as scrap products.

7.3 The Inquiry Officer accepted the petitioner's case that the fault, if any, was on the part of the Divisional Accountant and the Storekeeper who did not give necessary guidance to the Executive Engineer or the Deputy Executive Engineer as to whether such waste products/ bi-products should be classified as scrap. The Executive Engineer had also granted the permission to the petitioner to dispose of such products as scrap. Even the SOR rates for disposal of such products were fixed by the Superintending Engineer in August 1978 and the petitioner had disposed of the waste products/ bi-products at the rates determined by the Superintending Engineer. In spite of such specific findings given by the Inquiry Officer in favour of the petitioner, the Inquiry Officer held charge No.4 as having been partly proved against the petitioner. It is difficult to appreciate as to how such finding could have been recorded against the petitioner in spite of the fact that the decision was taken at the level of the Executive Engineer with the aid and assistance of the Divisional Accountant and the Storekeeper and when the materials in question were

sold in 1978-79 at the rates determined by the Superintending Engineer. The findings in respect of charge No.4 must also, therefore, be quashed and set aside as arbitrary and perverse.

8.1 Coming to charge No.6, the Department's case was that the rate for aluminium scrap was Rs.1.80 per kg. as per SOR but the petitioner sold aluminium chips at the lower rate of Rs.1.40 per kg..

8.2 The petitioner's defence was that the rate of Rs.1.80 per kg. was for aluminium scrap and aluminium chips sold by the petitioner cannot be compared with alumunium scrap. Aluminium scrap becomes available as the bi-product when the aluminium materials being manufactured in the foundry break down or become useless, but aluminium chips are the waste products which come out as chips when materials being manufactured from aluminium alloy are put on the lathe machine and on account of the heat generated by such lathe machine pieces of aluminium fly out as waste products. While aluminium scrap contains substantial quantities of aluminium, aluminium chips contain only 70 to 75% of aluminium scrap and, therefore, the price of aluminium chips can be assessed at 25 to 30% less than the price of aluminium scrap. Hence when the SOR rate of aluminium scrap was Rs.1.80 per kg and there was no separate SOR rate for aluminium chips, the petitioner's recommendation to fix the upset price for disposal of aluminium chips at Rs.1.40 per kg was bonafide and

reasonable and as a matter of fact the price for aluminium chips received was Rs.1.52 per kg which rate was approved by the Divisional office headed by the Executive Engineer and, therefore, the petitioner had not committed any misconduct in the matter of sale of aluminium chips. Even the SOR rate of Rs.1.80 for aluminium scrap was determined by the Superintending Engineer.

8.3 Having gone through the Inquiry Officer's report, the Court finds that the Inquiry Officer took the view that aluminium chips and aluminium scrap must be treated as the same kind of material with the same value. The Court does not find any expert evidence of any metallurgist or such other expert having been led by the Department to prove that aluminium chips and aluminium scrap were similar material or having same value. In any view of the matter, when the Executive Engineer had approved the rate at which the petitioner had recommended to dispose of aluminium chips which were waste products lying in the workshop, which was basically meant to be a foundry, the finding of the Inquiry Officer, as accepted by the Disciplinary Authority, that charge No.6 was also proved is required to be quashed and set aside as arbitrary and perverse.

9.1 Coming to charge No.7, the charge against the petitioner was that scrap materials worth about Rs.44,000/- were sold without inviting tenders when such materials of the value of more than Rs.5,000/-

could not have been disposed of without inviting the tenders.

9.2 In respect of the above charge also, the Inquiry Officer accepted the petitioner's case that the proposal sent by the petitioner for disposal of such scrap materials without inviting tenders was approved by the Executive Engineer. The petitioner's defence was that as per para 198 of the PWD Manual Vol.I where the value of any work is less than Rs.5,000, the Executive Engineer can sell the same without inviting tenders and as per para 190 of the said Manual, the Executive Engineer can even sell materials worth Rs.50,000 without inviting tenders. Hence when the Executive Engineer permitted the petitioner to sell the materials in question by selling them in lots of Rs.5,000 or less, the petitioner did not commit any misconduct, merely because the Executive Engineer had not obtained the prior sanction of the Superintending Engineer for such sale.

9.3 The petitioner was entitled to proceed on the basis that the Executive Engineer would have acted in accordance with the requirements of the PWD Manual before granting permission to the petitioner to dispose of scrap materials of the value of less than Rs.50,000 without inviting tenders. Hence we find substance in the submission of Mr Raval for the petitioner that the petitioner could not have been said to be guilty of misconduct so as to warrant

imposition of any penalty. Hence the finding of the Inquiry Officer that charge No.7 was partly proved also must be quashed as arbitrary and perverse.

10.1. As far as charge No.11 is concerned, the allegation against the petitioner was that the petitioner had disposed of the slag (waste remaining after heating the pig iron) of the value exceeding Rs.5000 without inviting tenders and that wrong measurements were made for the slag carted by the carting contractor. The charge against the petitioner was that by giving such carting contracts only for 400 MT at the rate of Rs.12 per MT, the petitioner had avoided inviting tenders because ultimately 1600 MT of slag was removed and that if that estimate was made in advance, tenders would have been invited. It was also charged that wrong measurements were given by the carting contractor and proper checking was not done.

10.2 The petitioner's defence was that slag generated in the manufacturing activity for the last many years had piled up in the workshop and was required to be removed. The Roads & Buildings Department of the State Government had taken up the project of constructing a new workshop in the nearby and pits were required to be filled in by such slag. The Executive Engineer heading the Divisional office had, therefore, instructed to the petitioner to give the carting contracts for immediately removing such slag for dumping the same into the pits which were

required to be filled in urgently so that the Roads & Buildings Department can commence construction of the new workshop. The petitioner's defence was that in view of the urgency, it was not practicable to invite tenders. The carting work commenced on 5.8.1978 and was completed on 20.8.1978 i.e. within a period of only about 15 days and the Executive Engineer had granted sanction on 31.8.1978 for the disposal at the rate of Rs.12 per MT.

The petitioner's defence was that the checking of the measurements was done by Junior Engineer Mr BJ Mehta and that although such serious charge was levelled regarding wrong measurements, the only order passed against Junior Engineer Mr BJ Mehta was that of warning whereas the petitioner has been subjected to harsh penalty.

10.3 The Court finds considerable substance in the submission of Mr Raval for the petitioner that when the petitioner was acting under the instructions of the Executive Engineer for immediately lifting the slag which had piled up in the workshop and for carting the same to the pits required to be filled in for construction of a new workshop by the Roads & Buildings Department of the State Government and when the Executive Engineer himself had ratified the carting contracts given by the petitioner, the Inquiry Officer could not have drawn adverse inference against the petitioner merely because the carting contractor happened to be the same party who

was also given the contract for removal of coal ash. The Court is, therefore, of the view that there was no evidence to hold that charge No.11 was proved against the petitioner or in any case it is not possible to hold that the petitioner had committed such misconduct which would warrant the penalty imposed upon the petitioner.

11.1 Now coming to charge No.5, the charge against the petitioner was that the petitioner had sent the proposal to Divisional office for sale of 2 tonnes of mild steel scrap and the sanction was granted by the Executive Engineer in the Divisional office for sale of 2 tonnes, but subsequently the petitioner made interpolation on the sanction letter by over-writing 20 M tonnes.

11.2 The petitioner's defence was that 20 MT of mild steel scrap lying in the workshop was to be disposed of and, therefore, permission was sought for the same and the Executive Engineer had also granted the permission for the same but on account of typographical mistake the sanction letter was for 2 Tonnes. Hence an employee of the Sub-divisional office was sent to the Storekeeper in the Divisional office for making the necessary correction and such correction was made by the Divisional office. The petitioner had not made any such correction, but the correction was made by the Divisional office. The Inquiry Officer , however, has given a finding that even the original proposal sent by the petitioner's

office was only for permission of sale of 2 MT of mild steel scrap and, therefore, the Head office had granted permission for sale of only 2 MT of the said material and that it did not appear whether the Divisional office or the Executive Engineer were taken into confidence before making any correction.

Mr Raval for the petitioner has submitted that it was because the Divisional office as well as the petitioner's office had known that the quantity of mild steel scrap proposed to be sold was 20 MT, that the Divisional office had granted permission for sale of 20 MT and that is why after the sale, the necessary intimation was given to the Divisional office and thereupon the Divisional office had approved the sale of 20 MT of mild steel scrap. It is further submitted by Mr Raval that the rate approved by the Divisional office for sale of mild steel scrap was Rs.390 per MT and that for 20 MT the total amount worked out to Rs.7800. It is submitted that the petitioner had put in 12 years of service when the transaction in question had taken place and that the sale price for 20 MT was Rs.7800. The petitioner had also pointed out in his reply to the show cause notice (Annexure-J) that the petitioner had always received good remarks in the confidential reports and that the petitioner had put in such performance that the petitioner's performance at all places was better than that of his predecessors. Hence the question of typographical mistake in the proposal or sanction for sale of 20 MT of mild steel scrap is required to be

considered in the background of the said service record of the petitioner and the Inquiry Officer or the Disciplinary Authority was not justified in imputing such motives to the petitioner.

11.3 As regards the aforesaid aspect, while the Court find that the defence urged by the petitioner cannot be said to be without any substance whatsoever, it appears to be a disputed question of fact and in absence of the original record before us, it is not possible to express any final opinion on that issue. However, looking to the overall tenor of the Inquiry Officer's report which came to be accepted by the Disciplinary Authority without referring to the defence urged by the petitioner and also considering the fact that the Court has found that the Inquiry Officer's findings in respect of charge Nos.1, 4, 6, 7 and 11 are not sustainable, as discussed above, the penalty imposed upon the petitioner appears to be too harsh and disproportionate considering the penalty imposed upon the Executive Engineer and the Junior Engineer who were also charge-sheeted along with the petitioner. It also appears that the Disciplinary Authority has not considered the impact of the penalty imposed upon the petitioner because the penalty has been implemented in such a manner that after reduction of the petitioner to the lower post of Junior Engineer for a period of two years, while reinstating the petitioner as Deputy Engineer the petitioner was placed at the initial stage of the pay-scale for

Deputy Engineer as a freshly recruited Deputy Engineer for the purposes of pay as well as seniority. Considering the fact that the amount involved on account of the difference between the price for sale of 2 MT of mild steel scrap and 20 MT of mild steel scrap was only about Rs.7000 and the Executive Engineer in the Divisional office had not objected to sale of 20 MT of mild steel scrap as contended by the petitioner (which fact may be verified by the Disciplinary Authority), the question whether charge No.5 levelled against the petitioner can be said to have been proved or not and that even if it can be said to have been proved, whether the petitioner should be subjected to the penalty of loss of pay and seniority even for the period after his reinstatement as Deputy Executive Engineer upon expiry of the two year period of reduction to the lower post of Junior Engineer, requires reconsideration by the Disciplinary Authority in light of the observations made in this judgment.

12. The petition is accordingly allowed. The order dated 19.6.1992 (Annexure-I) of the State Government is quashed and set aside. The matter is remanded to the State Government in order to decide afresh the inquiry against the petitioner only in respect of charge No.5.

It is made clear that the findings of the Inquiry officer in respect of charge Nos.1, 4, 6, 7 and 11, as accepted by the Disciplinary Authority,

are quashed and set aside as arbitrary and perverse because all the actions were taken by the petitioner as Deputy Executive Engineer with the prior approval of the Executive Engineer and in the facts and circumstances of the case, the acts and/or omissions on the part of the petitioner cannot be said to be such as to warrant the initiation of any disciplinary proceedings.

After considering the matter afresh, in case the State Government still takes the view that charge No.5 is proved against the petitioner the question of penalty shall also be considered afresh in light of the observations made in paragraph 11 of this judgment and particularly para 11.3 hereinabove.

The aforesaid exercise shall be carried out by the Disciplinary Authority within three months from the date of receipt of writ of this Court or a certified copy of this judgment, whichever is earlier and the financial benefits required to be given to the petitioner shall be paid to the petitioner within three months from the date of the fresh order to be passed by the Disciplinary Authority.

13. The petition accordingly stands partly allowed.

Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

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